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PPLICATION NO. FILING DATE		. FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/086,403	02/28/2002	George K. Porter	POR-105US	1329	
23122	7590 12/08/2003		EXAMINER		
RATNERP		BUSHEY, CHARLES S			
P O BOX 98 VALLEY FO	o ORGE, PA 19482-0980		ART UNIT	PAPER NUMBER	
			1724		

DATE MAILED: 12/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

•			Application	n No.	Applicant(s)					
Office Action Summary			10/086,40	3	PORTER ET AL.					
			Examiner		Art Unit					
	<u> </u>		Scott Bus	hey	1724					
Period fo	The MAILING DATE of this communica or Reply	tion appe	ears on the	cover sheet with the c	orrespondence ad	ldress				
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).  - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).										
Status				_	·					
,	Responsive to communication(s) filed on <u>09 October 2003</u> .									
2a)[_	This action is <b>FINAL</b> . 2b)	$\boxtimes$ This a	action is no	n-final.		,				
3)□	3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.									
Dispositi	on of Claims				•					
4)🖂	Claim(s) <u>1-20</u> is/are pending in the app	lication.		•						
	4a) Of the above claim(s) is/are withdrawn from consideration.									
5) Claim(s) is/are allowed.										
6)⊠	Claim(s) <u>1-20</u> is/are rejected.									
7)	Claim(s) is/are objected to.									
8)[	Claim(s) are subject to restrictio	n and/or	election re	equirement.						
Applicati	on Papers									
9)⊠	The specification is objected to by the E	xaminer	г.							
10) The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner.										
	Applicant may not request that any objection	n to the d	drawing(s) b	e held in abeyance. See	37 CFR 1.85(a).					
	Replacement drawing sheet(s) including the	e correction	on is require	ed if the drawing(s) is obj	ected to. See 37 C	FR 1.121(d).				
11)	The oath or declaration is objected to by	y the Exa	aminer. No	te the attached Office	Action or form P	ΓO-152.				
Priority ι	ınder 35 U.S.C. §§ 119 and 120									
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) All b) Some * c) None of:  1. Certified copies of the priority documents have been received.  2. Certified copies of the priority documents have been received in Application No  3. Copies of the certified copies of the priority documents have been received in this National Stage										
	application from the International	l Bureau	(PCT Rule	e 17.2(a)).						
* See the attached detailed Office action for a list of the certified copies not received.  13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet.  37 CFR 1.78.										
a) The translation of the foreign language provisional application has been received.										
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.										
Attachmen	t(s)									
1) Notice	e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review (PTO nation Disclosure Statement(s) (PTO-1449) Pape		<u>shts</u> .	4) Interview Summary 5) Notice of Informal Pa 6) Other:	(PTO-413) Paper No( atent Application (PT0					
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#### **DETAILED ACTION**

#### Election/Restrictions

1. Applicant's arguments relative to the election requirement mailed on July 8, 2003 have been considered and are persuasive. Accordingly, the election requirement is withdrawn and all of claims 1-20 have been examined herein.

## Specification

2. The abstract of the disclosure is objected to because legal phraseology, i.e., "comprises" should be avoided in the abstract. Correction is required. See MPEP § 608.01(b).

## Claim Objections

3. Claims 4, 7, 10, and 17 are objected to because of the following informalities: In claim 4, line 7, "gas input side" should apparently be replaced by --gas inlet side-- to be consistent with language found earlier in the claim. In claim 7, lines 1 and 2, respectively, "the gas input side" and "the mixture output side" should apparently be replaced by --the gas inlet side-- and --the mixture outlet side--, so as to be consistent with language in claim 4, from which claim 7 depends. In claim 10, line 6, "gas input side" should apparently be replaced by --gas inlet side-- to be consistent with language found earlier in the claim. In claim 17, line 6, "gas inlet side" should apparently be replaced by --gas input side-- to be consistent with language found earlier in the claim. Appropriate correction is required.

## Claim Rejections - 35 USC § 112

4. Claims 6, 8, 9, 12, and 17-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claims 6, 12, and 17 "the fluid stream" lacks antecedent basis.

In claims 8 and 9, "the mixing point" lacks antecedent basis.

#### Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 6. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Goenka et al (Figs. 1 and 2; col. 4, lines 9-10).

# **Double Patenting**

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,604,492. Although the conflicting claims are not identical, they are not patentably distinct from each other because the specific shape of the mixing slot and the gas heating means being in the form of a serpentine path would have been obvious to one having ordinary skill in the art in view of the general state of the

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art at the time of the invention. Applicant should note the cited references, which although they are not specifically relied upon in this rejection, they do indicate the well known nature of venturi type mixing channel, as well as serpentine heat exchange pathways.

#### Conclusion

- 9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
- 10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Bushey whose telephone number is (703) 308-3581. The examiner can normally be reached on Monday-Thursday 6:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine R. Copenheaver can be reached on (703) 308-1261. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Applicant should note that after approximately December 9, 2003, Scott Bushey can be reached at (571) 272-1153, and Blaine R. Copenheaver may be reached at (571) 272-1156.

Scott Bushey Primary Examiner Art Unit 1724

csb

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